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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186986
Party	Plaintiff LOEST & McNAMEE, INC.
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Attachments	4.20.10 Loest & McNamee - Opposers Reply Brief.pdf (3 pages)(186890 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77-247611
Published in the Official Gazette of January 26, 2010

)	Opposition No.
)	91186986
LOEST & McNAMEE, INC.)	
)	
)	
Opposer,)	
)	
)	
vs.)	
)	
Shaun Roberts Allen)	
)	
Applicant,)	
)	
_____)	

Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313, 1451

OPPOSER'S REPLY BRIEF

Pursuant to TBMP § 801.02(c) Opposer submits this brief in reply to Applicant's response brief filed on April 9, 2010.

Applicant does not dispute that the New Zealand proceeding may be dispositive in this matter. Instead, Applicant argues that suspending the current proceeding pending disposition of the New Zealand revocation action would be "a waste of time and resources for all parties involved".

On the contrary, the suspension is in the interest of judicial economy. The present application is based solely on Section 44(e). Therefore, the revocation proceeding in New Zealand would potentially be dispositive on the issue of whether the U.S. application can mature to registration. Such a dispositive resolution would render the present proceeding moot.

Moreover, in presenting its argument Applicant has failed to recognize the underlying rationale for TMEP §1004.01(a). The Board has pointed out that “as a result of Treaty Provisions and Section 44, foreign applicants are given substantial advantages over U.S. Citizens, most particularly, the right to obtain U.S. registrations for goods and services for which they have not yet used the marks in commerce”. *In re Societe D’Exploitation de la Marque Le Foquet’s* – 67 USPQ2d 1784– (TTAB 2003). Having chosen to base its application solely on Section 44(e), Applicant has availed itself of this substantial advantage. Applicant is therefore held to the requirement set forth in TMEP § 1004.01(a) that the underlying foreign registration must be valid at the time the U.S. registration issues.

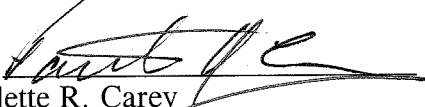
CONCLUSION

As provided by 37 CFR 2.117(c), the Board has authority to suspend proceedings before it for good cause. Opposer submits that good cause is presented in Opposer’s Motion. Firstly, by ensuring that the significant advantage accorded to a § 44(e) application is not undermined by an invalid underlying foreign registration. Secondly, good cause would be served by promoting judicial economy in that further proceedings in this action will be rendered moot in the event that the underlying New Zealand registration is revoked.

Dated: April 20, 2010

Respectfully Submitted,

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Certificate of Service

I hereby certify that on April 20, 2010, I served the foregoing OPPOSER'S MOTION FOR SUMMARY JUDGMENT by delivering a copy to the United States Postal Service, as first class mail postage prepaid in an envelope addressed to:

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